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NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CA NO. 87/2017
IN
CP No. 04/2013

Under Rule 11, 153 of the National Company
Law Tribunal, 2016

In the matter of :

Abhyudya Trading Limited - Petitioners

V/s.

M/s. Jatia Cotton Mills Limited & Ors.

Prabir Mukherjee-

Applicant/Respondent No. 4

Judgment / Order delivered on : 11.7.2011

CORAM :

Hon'ble Ms. Manorama Kumari, Member(J)

For the Petitioner(s)

: Mr. RK Mitra, Advocate
Mr. S Ghosh, Advocate
Mr. S Choudhury, Advocate
Mrs. P Chowdhury, Advocate

For the Respondent No.- 5

: Mr. Aniruddha Roy, Advocate
Mr. Ratnesh Rai, Advocate
Mr. Anumoy Basu, Advocate
Mr. Srinjoy Bhattacharya, Advocate

For the Respondent No.4

Mr. Promit Kumar Roy, Sr. Advocate
Mr. Dhiren Sharma, Advocate
Mr. Rajib Mullick, Advocate
Mr. Rakesh Sarkar, Advocate

Per : Ms.Manorama Kumari, Member(J)

O R D E R

The instant IA No.87/2017 is filed by the Respondent No.4/Applicant under Rule 11, 153 of the National Company Law Tribunal, 2016 with a prayer :

a) C.P. No. 64 of 2007 (Rani Jatia & Ors.- Vs.- Jatia Cotton Mills Limited & Ors.), C.P. No. 66 of 2008 (Venkateshwar Vanijya India & Ors. – Vs.- Jatia Cotton Mills Limited & Ors.) and C.P. No.4 of 2013 (Abhyudya Trading Limited & Ors.- Vs.- Jatia Cotton Mills Limited & Ors.) be heard together and be disposed of by a common judgment and order;

b) Stay of all further proceeding in all three company petitions till the disposal of the instant proceeding.

Apart from other prayers.

1. The Applicant/respondent No.4 has served the copy upon the petitioner who did not wish to file his reply. However, the Ld. Lawyer participated in the argument. The applicant/respondent No.4 submitted that case No.64/2007 and case No.66/2008 are more or less identical and parties to CP No.64/2007 and CP No.66/2008 are also more or less one and the same. Hence, the CP No. 4/2013 be heard together and be disposed of by a common judgment.

2. Before entering into the merit of the case, it is expedient to take into account the prayers made in CP No.64/2007 and CP No.66/2008.

On perusal of the prayers made in CP No. 64/2007 and CP No. 66/2008, it is observed that the prayers are not same and/or identical with that of CP No. 04/2013. The nature of allegation and/or complaint made in CP No.04/2013 is totally different with the above said two Company Petitions, arising out of different cause of action.

3. While exercising the power under Sections 397 and 402 of the Companies Act, 1956, the interest of the Company is being considered and not the individual dispute between the petitioner(s) and the Respondent(s). Furthermore, on perusal of the record, it is found that the issue involved in CP No.64/2007 and CP No.66/2008 are based on separate cause of action with that of CP No.04/2013. Moreover, there is no statutory bar.

4. On perusal of the record of CP No.04/2013, it is found that the pleadings are completed on 14-05-2015 and the matter proceeded for argument. On 25-06-2015, the petitioners' Advocate commenced his argument which was continued on 14-07-2015, 27-07-2015 and 05-08-2015 and have concluded the same on 15-09-2015. Thereafter, the matter is fixed for argument from the side of the respondent(s).

5. The Respondents, on the other hand, had commenced their argument on 08-10-2015 which also was continued on 07-11-2015, and on all these dates, while the Respondent No.4 participating in the proceeding, had never come with any application/petition with prayer to hear the matter together and dispose of the same with common judgment and order with that of CP No.64/2007 and CP No.66/2008.

Now, at such a belated stage, they have come with such type of application with no cogent reason. Had they made any endeavour to expedite the case earlier, by this time, there would have been the final disposal of the case.

At this stage, I found no reason/ground for entertaining the prayers made by the Respondent No.4/Applicant, when the relief sought for in CP No.04./2013 are not identical and same in nature with that of the CP No. 64/2007 and 66/2008, so as to dispose of all these cases with common judgment and hence, the Interlocutory Application No. 87/2017, so filed by the Respondent No.4/Applicant, is hereby rejected.

MANORAMA KUMARI
MEMBER(J)